

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of

GRAY TELEVISION LICENSEE, LLC
WTAP-TV (Fac. ID No. 4685)
WIYE-LD (Fac. ID No.130392)
WOVA-LD (Fac. ID No.125125)
Parkersburg, West Virginia

CSR - _____

Petition for Waiver of Sections 76.92(f) and
76.106(a) of the Commission's Rules

To: Office of the Secretary, Federal Communications Commission
Attn: Chief, Media Bureau

PETITION FOR SPECIAL RELIEF

Pursuant to 47 C.F.R. § 76.7(a)(1) (2011), Gray Television Licensee, LLC ("Gray"), licensee of WTAP-TV, WIYE-LD and WOVA-LD, Parkersburg, West Virginia, respectfully requests waivers of the "significantly viewed" exceptions to the network nonduplication rule, *id.* § 76.92(f), and the syndicated exclusivity rule, *id.* § 76.106(a), with respect to WOWK-TV, Huntington, West Virginia, and WVAH-TV, Charleston, West Virginia. Currently, those exceptions permit the incumbent and overbuilder cable television systems serving Parkersburg, West Virginia, to retransmit the entire signals of WOWK-TV and WVAH-TV, which include network and syndicated programming that duplicates the programming broadcast by Gray's television stations in Parkersburg.¹

¹ WOWK-TV and WVAH-TV are affiliates of the CBS and Fox television networks, respectively. Gray has affiliation agreements (i) with CBS authorizing carriage of CBS network programming on WTAP-TV and WIYE-LD and (2) with Fox authorizing carriage of Fox programming on WTAP-TV and WOVA-LD. In each case, Gray's affiliation agreement includes a grant of network non-duplication rights to the maximum extent permitted by the FCC's rules. WTAP-TV is also party to syndicated programming agreements providing exclusivity protection within the area described in 47 C.F.R. § 73.658(m) (2011), which includes Parkersburg.

The Commission's 1972 list of significantly viewed stations (the "SV List") identified WOWK-TV as significantly viewed in Wood County, West Virginia, where Parkersburg is located.² The SV List thereafter was amended to add WVAH-TV in Wood County.³ As demonstrated below, however, the distant signals of WOWK-TV and WVAH-TV no longer attain the viewing levels required for significantly viewed status in Parkersburg.⁴ Accordingly, Gray respectfully requests that the FCC waive the significantly viewed exceptions in 47 C.F.R. §§ 73.92(f) and 76.106(a) (2011) so that Gray may enforce its network nonduplication and syndicated program exclusivity protection rights in its Parkersburg stations' local community with respect to the duplicative programming of WOWK-TV and WVAH-TV.

I. BACKGROUND

Parkersburg, West Virginia, is well within the protected "geographic zone" for Gray's television stations provided by the Commission's Rules and by Gray's network affiliation and syndicated programming agreements, and outside the geographic zones of WOWK-TV and WVAH-TV.⁵ Consequently, the Commission's network nonduplication and syndicated program exclusivity rules ordinarily would permit Gray to require the Parkersburg cable systems to delete the duplicating network and syndicated programming of WOWK-TV and WVAH-TV in Parkersburg.⁶ Under the significantly viewed exceptions to those rules, however, a cable system

² *Amendment of Part 74, Subpart K, of the Commission's Rules and Regulations Relative to Community Antenna Television Systems*, Memorandum Opinion and Order on Reconsideration, 36 F.C.C.2d 326 (App. B) (1972) ("1972 Reconsideration Order List").

³ *See Implementation of the Satellite Home Viewer Extension and Reauthorization Act of 2004*, 20 FCC Rcd 17278, App'x. C (2005).

⁴ *See* Section II, *infra*, and Exhibit A.

⁵ The geographic zone for WOWK-TV and WVAH-TV is 35 miles from Charleston and Huntington. The geographic zone for Gray's Parkersburg television stations is 55 miles from Parkersburg with respect to network programming and 35 miles with respect to syndicated programming. 47 C.F.R. § 76.92, Note; *id.* § 76.101, Note.

⁶ *Id.* §§ 76.92 and 76.101.

is not required to delete the duplicating programming of distant stations like WOWK-TV and WVAH-TV if such stations are deemed to be “significantly viewed” in the community at issue.⁷ Because the SV List indicates that distant WOWK-TV and WVAH-TV have significantly viewed status in Wood County,⁸ the stations are each presumed to be significantly viewed today in the entire county, including Parkersburg. As a result, the Parkersburg cable systems currently are not required to delete the duplicating programming of WOWK-TV and WVAH-TV in Parkersburg.⁹

II. WAIVER SHOWING

The presumption created by the SV List often no longer reflects real-life circumstances in particular markets. The Commission therefore adopted procedures for waiving the significantly viewed exception based on studies by an independent, professional audience survey organization.¹⁰ To obtain a waiver, a petitioner must demonstrate, “utilizing community- or system-specific data, to one standard error, . . . that the station in question has not met [the FCC’s] standards for significant viewing for two consecutive years.”¹¹ In order to be presumed significantly viewed in a community, WOWK-TV, a CBS affiliate, must achieve *both* “a share of viewing hours of at least 3 percent (total week hours), and a net weekly circulation of at least 25 percent” in non-cable homes in the community. WVAH-TV, a Fox affiliate, must achieve *both* “a share of viewing hours of at least 2 percent (total week hours), and a net weekly circulation of at least 5 percent” in non-cable homes in that community.¹²

⁷ See *id.* §§ 76.92(f) and 76.106(a).

⁸ 1972 *Reconsideration Order List*, 36 FCC 2d 326 (App B).

⁹ 47 C.F.R. § 76.92(f) (2011).

¹⁰ *Id.* § 76.54.

¹¹ *KCST-TV, Inc.*, 103 FCC 2d 407, 413 (1986) (“*KCST-TV*”).

¹² 47 C.F.R. § 76.5(i) (2011).

As explained below, according to community-specific data obtained by Gray from Nielsen Media Research (“Nielsen”), an independent professional survey organization, WOWK-TV and WVAH-TV no longer meet the relevant viewership thresholds in Parkersburg and, therefore, should no longer be deemed significantly viewed there.

To provide a representative sample of over-the-air viewing of WOWK-TV and WVAH-TV in Parkersburg, Nielsen prepared a special tabulation of diaries obtained from non-cable and non-ADS households in Parkersburg (the “Nielsen Study”).¹³ Data in the Nielsen Study were compiled based on the Nielsen Station Index survey conducted over four-week periods during February and May 2011 and February and May 2012 based on the residential zip codes assigned to Parkersburg by the U.S. Postal Service. Those Zip codes are 26101 and 26104, excluding codes devoted exclusively to P.O. boxes or unique addresses (probably commercial buildings).¹⁴

Based on the results of the Nielsen Study, the average net weekly circulation (cume) and average share of viewing hours of WOWK-TV in Parkersburg during the survey periods were as follows:

Survey Period	Households Studied	Avg. Net Weekly Circulation	Standard Error	Avg. Share Viewing Hours	Standard Error
Feb/May 11	10	0.00	0.00	0.00	0.00
Feb/May 12	7	0.00	0.00	0.00	0.00

¹³ The Nielsen Study is attached hereto at Exhibit A. Gray notified interested parties of its intent to purchase data from Nielsen, as required. See 47 C.F.R. § 76.54(c) (2011); *Meredith Corporation Petition For Waiver of Section 76.92(f) of the Commission’s Rules*, 22 FCC Rcd 12932, 12935 (2007) (“*Meredith*”).

¹⁴ See generally Exhibit A. The Nielsen Study satisfies the requirements that the data be separated by 30 days and not more than one of the surveys may be taken between April and September. See 47 C.F.R. § 76.54(b) (2011); *Meredith*, 22 FCC Rcd 12932, 12934. In addition, the Commission routinely accepts special tabulations of Nielsen data gathered over two four-week sweeps periods in each of two consecutive years. E.g., *Meredith, supra*; *WTNH Broadcasting, Inc.*, 16 FCC Rcd 16377 (2001).

As noted above, for WOWK-TV to be considered significantly viewed in Parkersburg, its net weekly circulation (cume) and its share of total viewing hours (with both figures accounting for one standard error) must be at least 25 percent and 3 percent, respectively.¹⁵ During both the Feb/May 2011 and Feb/May 2012 combined measurement periods, the station had a zero cume and a zero share. Accordingly, WOWK-TV failed to meet the required viewing standard in both 2011 and 2012, and Gray has met its burden to obtain the requested waivers with respect to WOWK-TV.

Turning to WVAH-TV, its cume and share during the survey periods were as follows:

Survey Period	Households Studied	Avg. Net Weekly Circulation	Standard Error	Avg. Share Viewing Hours	Standard Error
Feb/May 11	10	4.79	5.81	0.94	1.02
Feb/May 12	7	0.00	0.00	0.00	0.00

Also as noted above, for WVAH-TV to be considered significantly viewed in Parkersburg, its net weekly circulation (cume) and its share of total viewing hours (with both figures accounting for one standard error) must be at least 5 percent and 2 percent, respectively.¹⁶ During both the Feb/May 2011 and Feb/May 2012 combined measurement periods, WVAH-TV failed to achieve a 2 percent share. Accordingly, WVAH-TV failed to meet the required viewing standard in both 2011 and 2012, and Gray has met its burden to obtain the requested waivers with respect to WVAH-TV.

Gray, therefore, respectfully requests waivers of the significantly viewed exceptions so that it may enforce its network nonduplication and syndicated exclusivity rights in its

¹⁵ 47 C.F.R. § 76.5(i), (j) (2011).

¹⁶ *Id.* § 76.5(i), (l).

Parkersburg television stations' local community with respect to the duplicating programming of WOWK-TV and WVAH-TV retransmitted by the Parkersburg cable systems.

III. CONCLUSION

Currently, Gray cannot enforce its rights to require the Parkersburg cable systems to delete the duplicating network and syndicated programming of WOWK-TV and WVAH-TV in Parkersburg because the SV List indicated that those stations have significantly viewed status in Wood County, West Virginia. The Nielsen Study attached hereto clearly demonstrates that WOWK-TV and WVAH-TV are no longer significantly viewed in Parkersburg. Accordingly, the SV List's inclusion of those stations as significantly viewed in Wood County should no longer deprive Gray of its network nonduplication and syndicated exclusivity protection rights in Parkersburg. Gray, therefore, respectfully requests that the FCC waive the significantly viewed exceptions to its network nonduplication and syndicated exclusivity rules with respect to WOWK-TV and WVAH-TV so that Gray may assert its rights regarding such programming on the Parkersburg cable systems.

Respectfully submitted,

GRAY TELEVISION LICENSEE, LLC

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December 27, 2012

Exhibit A



The attached report provides audience net weekly circulation (cume) and share information among non-cable/non-ADS households for WOWK and WVAH during the Nielsen Station Index (NSI) survey conducted over four week periods during the February 2011, May 2011, February 2012 and May 2012 measurement periods. The report is based on series of Zip code groups. Households will maintain the reported Nielsen Viewers in Profile (VIP) weights used to project in-tab sample households to universe estimates for their respective measurement periods. This study measures non-cable/non-ADS household viewing between 7AM-1AM, Monday to Sunday.

The sample source for this survey consisted of non-cable/non-ADS TV households returning usable television viewing diaries. NSI procedures were used for distributing diaries and for compiling the estimated audience projections in this report. Average quarter hour projections were computed by summing weights for quarter hours in the daypart for the non-cable/non-ADS in-tab households and dividing by the number of quarter hours in the daypart. The weights which were used for projections are those used to project in-tab sample households to universe estimates in the regular Nielsen Viewers in Profile analysis. Share and cume estimates as well as their respective standard errors are computed for each of the geographies as follows:

Shares of total viewing are computed by dividing average quarter hour M-Su 7AM-1AM projections of a given station for the non-cable/non-ADS in-tab households by the average quarter hour M-Su 7AM-1AM projections in non-cable/non-ADS households across all stations. The associated standard error is calculated using the accepted formula for computing the standard error of a ratio estimate and is shown below:

The average weekly circulation (cume) is an average of the four weeks of the measurement period. The cume was computed by summing the weights for all non-cable/non-ADS households tuning at least one quarter hour to a given station within the cycle during the M-Su 7AM-1AM daypart and dividing by the sum of all non-cable/non-ADS weights within the given measurement period for each week. The cume for each week in the measurement period is then summed and divided by the number of weeks in the measurement period to compute the average weekly cume. The associated standard error for the average weekly cume is calculated using the accepted formula for computing the standard error of a ratio estimate. This standard error is the error of the average weekly cume; it is not an average of the weekly standard error. The formulas used are shown below:

Share

$$Share = \frac{\sum_1^n (w * Qhrs(s))}{\sum_1^n (w * Qhrs(t))}$$

Share Standard Error



$$\text{Std Error} = \sqrt{\frac{n}{n-1} * \sum_1^n \left[\frac{(w * Qhrs(s)) - (\text{Share} * w * Qhrs(t))}{\sum_1^n (w * Qhrs(t))} \right]^2}$$

where n = number of intab households

where w = household weight

where $Qhrs(s)$ = total quarter hours tuned to station of interest by household

where $Qhrs(t)$ = total quarter hours tuned by household

Average Weekly Cume

$$\text{Average Weekly Cume} = \frac{1}{z} * \sum_1^z \left[\frac{\sum_1^n (HH \text{ Weight} * x)}{\sum_1^n HH \text{ Weight}} \right]$$

Average Weekly Cume Standard Error

$$\text{Std Error} = \sqrt{\frac{1}{z^2} \sum_1^z \left[\frac{n}{n-1} * \sum_1^n \left[\frac{(x - \text{Week Cume}) * HH \text{ Weight}}{\sum_1^n HH \text{ Weight}} \right]^2 \right]}$$

where z = number of weeks in analysis (with non-zero intabs)

where n = number of intab households in week

where $x = 0$ if household did not tune station of interest

where $x = 1$ if household did tune station of interest

The attached report is representative of the viewing patterns of the non-cable/non-ADS households of the geographic area surveyed.



Significant Viewing Study
Parkersburg
Feb11, May11, Feb12 & May12
Su-Sa 7A-1A
WOWK & WVAH

WOWK

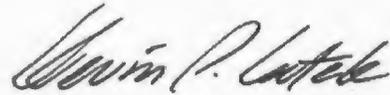
Geography Grouping	Results	Feb11 & May11	Feb12 & May12
		Combined	Combined
26101, 26104	Number of Intabs	10	7
	Average Weekly Cume	0.00	0.00
	Cume Std. Error	0.00	0.00
	Share	0.00	0.00
	Share Std. Error	0.00	0.00

WVAH

Geography Grouping	Results	Feb11 & May11	Feb12 & May12
		Combined	Combined
26101, 26104	Number of Intabs	10	7
	Average Weekly Cume	4.79	0.00
	Cume Std. Error	5.81	0.00
	Share	0.94	0.00
	Share Std. Error	1.02	0.00

DECLARATION OF KEVIN P. LATEK

I, Kevin P. Latek, am the Secretary of Gray Television Licensee, LLC. I hereby declare under penalty of perjury that I have reviewed the foregoing petition and it is true and correct to the best of my knowledge.



Kevin P. Latek

Dated: December 27, 2012

Certificate of Service

I, Kimberly Booth, a secretary in the law firm of Wiley Rein LLP, do hereby certify that I have on this 27th day of December 2012, caused a copy of the foregoing "Petition for Special Relief" to be served by First Class U.S. Mail postage prepaid, upon the following:

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Kimberly Booth

Agency Tracking ID:PGC2257092 Authorization Number:282789

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(6) CITY Washington	(7) STATE DC	(8) ZIP CODE 20006-2304
(9) DAYTIME TELEPHONE NUMBER (INCLUDING AREA CODE) 202-7197000 x7235		(10) COUNTRY CODE (IF NOT IN U.S.A.) US
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(13) APPLICANT NAME Gray Television Licensee, LLC		
(14) STREET ADDRESS LINE NO. 1 1750 K Street, NW		
(15) STREET ADDRESS LINE NO. 2 Suite 1200		
(16) CITY Washington	(17) STATE DC	(18) ZIP CODE 20006
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(21) APPLICANT (FRN) 0018223693	(22) FCC USE ONLY	
COMPLETE SECTION C FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET		
(23A) FCC Call Sign/Other ID WTAP-TV	(24A) Payment Type Code(PTC) TQC	(25A) Quantity 1
(26A) Fee Due for (PTC) \$1,355.00	(27A) Total Fee \$1355.00	FCC Use Only
(28A) FCC CODE 1 Parkersburg, WV	(29A) FCC CODE 2 X	
(23B) FCC Call Sign/Other ID	(24B) Payment Type Code(PTC)	(25B) Quantity
(26B) Fee Due for (PTC)	(27B) Total Fee	FCC Use Only
(28B) FCC CODE 1	(29B) FCC CODE 2	